

SITE DEVELOPMENT PERMIT AMENDMENT

FILE NO.	HA68-135-01
LOCATION OF PROPERTY	550 Kiely Boulevard
ASSESSOR'S PARCEL NUMBER	303-26-027 & -035
ZONING DISTRICT	R-M Multiple Residence
GENERAL PLAN DESIGNATION	MUN Mixed Use Neighborhood
PROPOSED USE	Site Development Permit Amendment to allow the installation of two vehicular gates and five pedestrian gates, the construction of 7-foot-high fences between the existing buildings and the proposed gates, the modification of the existing brick walls facing Boynton Avenue, and the minor reconfiguration of parking spaces on an approximately 3.77-gross acre multifamily residential site.
ENVIRONMENTAL STATUS	Exempt per CEQA Guidelines Section 15303(e) for Accessory Structures
APPLICANT/OWNER ADDRESS	Jay Morris Mediterranean San Jose Apts LLC PO Box 605 Graton, CA 95444

FACTS AND FINDINGS

The Director of Planning, Building, and Code Enforcement finds that the following are the relevant facts and findings regarding this proposed project:

1. **Project Description.** The project is a Site Development Permit Amendment to allow the installation of two vehicular gates and five pedestrian gates, the construction of 7-foot-high fences between the existing buildings and the proposed gates, the modification of the existing brick walls facing Boynton Avenue, and the minor reconfiguration of parking spaces on an approximately 3.77-gross acre multifamily residential site.
2. **Site Description and Surrounding Uses.** This 3.77-gross acre site is accessible by one driveway from Kiely Boulevard and one driveway from Boynton Avenue. The site is occupied by 13 apartment buildings with 94 units, carports, surface parking lots and open spaces. The site is surrounded by multifamily residential except for a medical office building and a church to the north and the east.

The project proposes to install one vehicular gate on the driveway accessed from Kiely Boulevard and another vehicular gate on the driveway accessed from Boynton Avenue. 7-foot-high steel frame fences will be constructed to connect the vehicular gates, the existing buildings, and the existing brick walls. Three-foot-high steel fences will be installed on top of the existing four-foot-high brick walls facing Boynton Avenue. Five pedestrian gates will be installed. The project also includes minor parking reconfiguration and will result in reducing one parking space.

3. **General Plan Consistency.** The subject site is designated **MUN Mixed Use Neighborhood** on the Land Use/Transportation Diagram of the Envision San José 2040 General Plan. The project only includes the installation of gates and fences, minor parking space reconfiguration, and does not change the existing multifamily residential use. Therefore, the project is consistent with the MUN land use designation.
4. **Zoning Conformance.** The project site is located within the **R-M Multiple Residence** Zoning District.
 - a. **Setback:** The project site has two front property lines per Zoning Code definition [20.200.670.A.1](#) because the property lines along both streets are more than 120 feet long. The building setback requirements within R-M district are minimum 15 feet from front property line, minimum 5 feet from side property line and minimum 25 feet from the rear property line.

The vehicular gate facing Kiely Boulevard is approximately 75.5 feet from the property line along Kiely Boulevard. The pedestrian gate and fences facing Kiely Boulevard are minimum 16 feet from this front property line.

The vehicular gate facing Boynton Avenue is approximately 52 feet from the property line along Boynton Avenue. The pedestrian gates and fences facing Kiely Boulevard are minimum 15.1 feet from this front property line.

The project meets the minimum 15-foot front setback requirement in R-M district.

In addition, Department of Public Works reviewed the project and determines that the proposed vehicular gates have sufficient setback for stacking.
 - b. **Height:** The height limit in R-M district is 45 feet. All proposed fences/gates are 7-foot high. Project complies.
 - c. **Parking:** There are 44 two-bedroom units and 50 one-bedroom units within the project site. The parking ratio for two-bedroom unit is 1.7 spaces per unit and the parking ratio for one-bedroom unit is 1.25 spaces per unit. The total number of required parking spaces is 138. Currently there are 139 parking spaces on site. The project would change some full-size parking spaces to small-size parking spaces. The project will result in 138 parking spaces, among which 20 spaces (14%) are small-size parking spaces. The project meets the minimum parking requirement and does not exceed the maximum 40% small-size parking space requirement.
5. **Environmental Review.** Under the provisions of Section 15303 New Construction or Conversion of Small Structures of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA), the Site Development Permit Amendment is found to be exempt from the environmental review requirements of Title 21 of the San José Municipal Code, implementing the California Environmental Quality Act of 1970, as amended. CEQA Guidelines Section 15303(e) applies to accessory structures.

The project only involves the installation of gates and fences and minor parking restriping. No other physical improvements to the site are proposed. Except for adding fences and a pedestrian gate to the columns of the existing open foyer facing Kiely Boulevard, no other physical changes to the existing buildings are proposed. Department of Public Works reviewed the project and determines that the proposed vehicular gates have sufficient setback for stacking. Therefore, the project would not have an unacceptable negative affect on adjacent properties regarding noise, vibration, dust, drainage, erosion, stormwater runoff, and odor and is considered exempt in accordance with CEQA Guidelines Section 15303(e) for accessory structures.

6. Site Development Permit Findings. Section 20.100.630 of the San Jose Municipal Code establishes the following required findings for issuance of a Site Development Permit:

- a. The Site Development Permit, as approved, is consistent with and will further the policies of the General Plan and applicable Specific Plans and Area Development Policies.

Analysis: As described above, the project is consistent with the General Plan.

- b. The Site Development Permit, as approved, conforms with the Zoning Code and all other provisions of the San Jose Municipal Code applicable to the project.

Analysis: As discussed above, the proposed project conforms to the development regulations established for the R-M Multiple Residence Zoning District in that the project conforms to the setback and height requirements of this Zoning District. The project also conforms with the minimum parking requirement as discussed above.

- c. The Site Development Permit, as approved, is consistent with applicable City Council Policies, or counterbalancing considerations justify the inconsistency.

Analysis: The project is in compliance with Public Outreach City Council Policy. Two development signs have been posted on the site and the project has been noticed for public hearing to a radius of 500 feet from the project site.

- d. The interrelationship between the orientation, location, and elevations of proposed buildings and structures and other uses on-site are mutually compatible and aesthetically harmonious.

Analysis: As discussed above, the project only includes the installation of the gates and fences and minor parking restriping. The project does not change the interrelationship between the orientation, location, and elevations of the buildings on-site.

- e. The orientation, location and elevation of the proposed buildings and structures and other uses on the site are compatible with and are aesthetically harmonious with adjacent development or the character of the neighborhood.

Analysis: Except for adding fences and a pedestrian gate to the columns of the existing open foyer facing Kiely Boulevard, the proposed project does not alter existing building appearance. The gates and fences are all 7 feet in height and are all outside of the front setback areas. The proposed steel frame fences have an open appearance. There are existing landscape areas in front of the fences along the two street frontages. The project would not significantly impact the site appearance.

- f. The environmental impacts of the project, including but not limited to noise, vibration, dust, drainage, erosion, storm water runoff, and odor which, even if insignificant for purposes of the California Environmental Quality Act (CEQA), will not have an unacceptable negative affect on adjacent property or properties.

Analysis: As discussed above, the project only involves the installation of gates and fences and minor parking restriping. No other physical improvements to the site are proposed. Except for adding fences and a pedestrian gate to the columns of the existing open foyer facing Kiely Boulevard, no other physical changes to the existing buildings are proposed. Department of Public Works reviewed the project and determines that the proposed vehicular gates have sufficient setback for stacking. Hence the project would not result in an unacceptable negative affect on adjacent properties. Under the provisions of Section 15303 of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA), which allows for the construction and location of limited numbers of new, small facilities or structures, this project is found to be exempt from the environmental review requirements.

- g. Landscaping, irrigation systems, walls and fences, features to conceal outdoor activities, exterior heating, ventilating, plumbing, utility and trash facilities are sufficient to maintain or upgrade the appearance of the neighborhood.

Analysis: As described above, the project only involves the installation of gates and fences and minor parking restriping. No other physical improvements are proposed.

- h. Traffic access, pedestrian access and parking are adequate.

Analysis: The site is accessible by a driveway from Kiely Boulevard and a driveway from Boynton Avenue. The project still meets the minimum parking space requirement and would not change the pedestrian access to the site. Department of Public Works reviewed the project and determines that the proposed vehicular gates have sufficient setback for stacking.

In accordance with the findings set forth above, a Site Development Permit Amendment for said purpose specified above and subject to each and all of the conditions hereinafter set forth is hereby **approved**. The Director of Planning, Building, and Code Enforcement expressly declares that it would not have granted this Permit except upon and subject to each and all of said conditions, each and all of which conditions shall run with the land and be binding upon the owner and all subsequent owners of the subject property, and all persons who use the subject property for the use conditionally permitted hereby.

APPROVED SUBJECT TO THE FOLLOWING CONDITIONS:

1. **Acceptance of Permit.** Per Section 20.100.290(B), should the permittee fail to file a timely and valid appeal of this Permit within the applicable appeal period, such inaction by the permittee shall be deemed to constitute all of the following on behalf of the permittee:
 - a. Acceptance of the Permit by the permittee; and

- b. Agreement by the permittee to be bound by, to comply with, and to do all things required of or by the permittee pursuant to all of the terms, provisions, and conditions of this permit or other approval and the provisions of Title 20 applicable to such Permit.
2. **Permit Expiration.** This Permit shall automatically expire four (4) years from and after the date of issuance hereof by the Director, if within such time period, the proposed use of the site or the construction of buildings (if a Building Permit is required) has not commenced, pursuant to and in accordance with the provision of this Permit. The date of issuance is the date this Permit is approved by the Director of Planning. However, the Director of Planning may approve a Permit Adjustment/Amendment to extend the validity of this Permit in accordance with Title 20. The Permit Adjustment/Amendment must be approved prior to the expiration of this Permit.
3. **Building Permit/Certificate of Occupancy.** Procurement of a Building Permit and/or Certificate of Occupancy from the Building Official for the structures described or contemplated under this Permit shall be deemed acceptance of all conditions specified in this Permit and the Permittee's agreement to fully comply with all of said conditions. No change in the character of occupancy or change to a different group of occupancies as described in the Building Code shall be made without first obtaining a Certificate of Occupancy from the Building Official, as required under San José Municipal Code Section 24.02.610, and any such change in occupancy must comply with all other applicable local and state laws.
4. **Conformance to Plans.** The development of the site shall conform to the approved Site Development Permit Amendment plans entitled, "The Mediterranean Driveway & Pedestrian Gates, Site Development Permit Amendment, File No. HA68-135-01, 550 South Kiely Boulevard, San Jose, CA 95117" dated revised November 8, 2021, on file with the Department of Planning, Building and Code Enforcement, and to the San José Building Code (San José Municipal Code, Title 24), with the exception of any subsequently approved changes.
5. **Conformance with Municipal Code.** No part of this approval shall be construed to permit a violation of any part of the San José Municipal Code.
6. **Compliance with Local and State Laws.** The subject use shall be conducted in full compliance with all local and state laws. No part of this approval shall be construed to permit a violation of any part of the San José Municipal Code. The Permit shall be subject to revocation if the subject use is conducted in such a manner as to cause a nuisance, as defined above.
7. **Discretionary Review.** The Director of Planning, Building and Code Enforcement maintains the right of discretionary review of requests to alter or amend structures, conditions, or restrictions of this Permit incorporated by reference in accordance with Chapter 20.100 of the San Jose Municipal Code.
8. **Hours of Construction.** Construction shall be limited to the hours of 7:00 a.m. to 7:00 p.m. Monday through Friday for any on-site or off-site work within 500 feet of any residential unit.
9. **No Sign Approval:** Any signage shown on the approved plan set are conceptual only. No signs are approved at this time. Any additional signage shall be subject to the review and approval by the Director of Planning through a subsequent Permit Adjustment.
10. **Nuisance.** This use shall be operated in a manner which does not create a public or private nuisance. Any such nuisance must be abated immediately upon notice by the City.

11. **Building and Property Maintenance.** The property owner or management company shall maintain the property in good visual and functional condition. This shall include, but not be limited to all exterior elements of the buildings such as paint, roof, paving, signs, lighting and landscaping.
12. **Building Division Clearance for Issuing Permits.** Prior to the issuance of a Building Permit, the following requirements must be met to the satisfaction of the Chief Building Official:
 - a. *Construction Plans.* This permit file number, **HA68-135-01** shall be printed on all construction plans submitted to the Building Division.
 - b. *Americans with Disabilities Act.* The permittee shall provide appropriate access as required by the Americans with Disabilities Act (ADA).
 - c. *Construction Plan Conformance.* A project construction plan conformance review by the Planning Division is required. Planning Division review for project conformance will begin with the initial plan check submittal to the Building Division. Prior to any building permit issuance, building permit plans shall conform to the approved Planning development permits and applicable conditions.
13. **Bureau of Fire Department Clearance for Issuing Permits.** Prior to the issuance of a Building Permit, the project must comply with the 2019 California Fire Code.
14. **Revocation, Suspension, Modification.** This Permit may be revoked, suspended or modified by the Planning Director, or by the Planning Commission on appeal, at any time regardless of who is the owner of the subject property or who has the right to possession thereof or who is using the same at such time, whenever, after a noticed hearing in accordance with Part 3, Chapter 20.44, Title 20 of the San José Municipal Code it finds:
 - a. A violation of any conditions of the Permit was not abated, corrected or rectified within the time specified on the notice of violation; or
 - b. A violation of any City ordinance or State law was not abated, corrected or rectified within the time specified on the notice of violation; or
 - c. The use as presently conducted creates a nuisance.

APPROVED and issued on this **2nd** day of February 2022.

Christopher Burton, Director
Planning, Building, and Code Enforcement

Sylvia Do
Deputy